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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,083	04/30/2001	John Mantegna	06975-148001 / Processing	1607
26171	7590	05/20/2005	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			QURESHI, SHABANA	
			ART UNIT	PAPER NUMBER
			2155	
DATE MAILED: 05/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/845,083

**Applicant(s)**

MANTEGNA ET AL.

**Examiner**

Shabana Qureshi

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11-16 and 21-26 is/are rejected.
- 7) ☒ Claim(s) 7-10, 17-20 and 27-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1-30 are pending in this office action. Independent claims 1, 11, and 21 filed 25 August 2004 were amended. Claims 7-10, 17-20, and 27-30 are objected to, while claims 1-6, 11-16, and 21-26 remain rejected.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 11-16, and 21-26 are rejected under 35 U.S.C. 102(b) as being anticipated by David Ward (EP 921, 666 A2).

In regards to claims 1, 11, and 21, Ward teaches a method for dynamic latency management in a real-time electronic communication comprising:

- measuring a communication delay arising from a receiving data buffer (receiving data buffer, page 4, lines 16-23; page 4, line 37; measuring the communication delay of the delivery, page 6, lines 1-10);
- determining a latency adjustment necessary to adjust the size of the communication delay to within a predetermined range (“... determining a difference between the number of stored units awaiting delivery and a target number representing the target delay”, page 4, lines 22-23);

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- determining an optimal range for a size of the communication delay based on the measured communication delay (page 4, lines 28-31; “... determining a difference between the number of stored units awaiting delivery and a target number representing the target delay”, page 4, lines 22-23); and
- modifying a number of samples of a playback data block passing through the receiving data buffer based on the measured communication delay and on the optimal range for the size of the communication delay (“altering the rate of extraction to change the number of stored units awaiting delivery and a target number representing a target delay”, page 4, lines 25-26).

As per claims 2, 12, and 22, Ward teaches the method of claims 1, 11, and 21, wherein the number of samples is modified without introducing audible artifacts (page 6, lines 39-49).

As per claims 3, 13, and 23, Ward teaches the method of claims 1, 11, and 21, wherein measuring the communication delay comprises measuring an instantaneous communication delay associated with the receiving data buffer (page 6, lines 1-7).

As per claims 4, 14, and 24, Ward teaches the method of claims 3, 12, and 23, wherein measuring the communication delay comprises:

- measuring the instantaneous communication delay associated with the receiving data buffer two or more times (page 4, lines 43-46); and
- averaging the measurements (page 4, lines 45).

As per claims 5, 15, and 25, Ward teaches the method of claims 1, 11, and 21, wherein the real-time electronic communication includes an audio communication (page 4, lines 32-35).

As per claims 6, 16, and 26, Ward teaches the method of claims 1, 11, and 21, further

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comprising determining receiving data buffer delay upper and lower bounds (page 4, lines 6-9).

***Allowable Subject Matter***

4. Claims 7-10, 17-20, and 27-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Applicant's arguments filed 25 August 2004 have been fully considered but they are not persuasive for the following reasons.

Applicants' main argument is that Ward does not describe or suggest a modifying a number of samples of a playback block passing through a buffer.

6. Examiner respectfully disagrees with the allegations as argued. Examiner, in her previous office action, gave detail explanation of claimed limitation and pointed out exact locations in the cited prior art.

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification, see MPEP 2111.

During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51 (CCPA 1969).

In response to Applicants' argument, Ward teaches altering the rate of extraction to change the number of the stored units awaiting delivery of a stored unit is altered toward the target delay; see summary on page 4. Here Ward explains that altering the rate of extraction also alters the communication delay in order to reach a target delay (target delay is interpreted to be optimal range for communication delay). Ward further teaches a plurality of samples and modifies the rate of frames (playback block) in page 6 with the use of a gate to control the rate. Applicant agrees that Ward merely modifies the rate at which playback block (or frames) are extracted from the buffer. Examiner believes that Ward actually teaches claimed modification as Applicant agrees on his argument on page 2 of response. Examiner, therefore, conclude that Ward teaches all of the claim limitation.

For the above reasons, Examiner believes that rejection for claims 1-6, 11-16, and 21-26 of the last Office action was proper.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shabana Qureshi whose telephone number is (571) 272-3990.

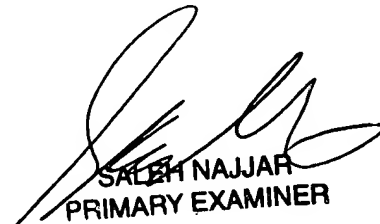
The examiner can normally be reached on Monday - Thursday, 9:30 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shabana Qureshi  
Examiner  
Art Unit 2155

SQ  
May 15, 2005



SALEH NAJJAR  
PRIMARY EXAMINER